

# HB4028



## 99TH GENERAL ASSEMBLY

State of Illinois

2015 and 2016

HB4028

by Rep. Martin J. Moylan

### SYNOPSIS AS INTRODUCED:

815 ILCS 505/2B

from Ch. 121 1/2, par. 262B

Amends the Consumer Fraud and Deceptive Business Practices Act. Provides that a person age 65 and older may cancel certain contracts within 15, rather than 3, days after the day the contract was signed. Effective January 1, 2016.

LRB099 08082 JLS 28228 b

A BILL FOR

1 AN ACT concerning business.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Consumer Fraud and Deceptive Business  
5 Practices Act is amended by changing Section 2B as follows:

6 (815 ILCS 505/2B) (from Ch. 121 1/2, par. 262B)

7 Sec. 2B. Where a sale of merchandise involving \$25 or more  
8 is made or contracted to be made whether under a single  
9 contract or under multiple contracts, to a consumer by a seller  
10 who is physically present at the consumer's residence, that  
11 consumer may avoid the contract or transaction by notifying the  
12 seller within 3 full business days (or 15 full business days if  
13 the consumer is age 65 or older) following that day on which  
14 the contract was signed or the sale was made and by returning  
15 to the person, in its original condition, any merchandise  
16 delivered to the consumer under the contract or sale. At the  
17 time the transaction is made or the contract signed, the person  
18 shall furnish the consumer with a fully completed receipt or  
19 contract pertaining to the transaction, in substantially the  
20 same language as that principally used in the oral presentation  
21 to the consumer, containing a "Notice of Cancellation"  
22 informing the consumer that he may cancel the transaction at  
23 any time within 3 days (or 15 days if the consumer is age 65 or

1 older) and showing the date of the transaction with the name  
 2 and address of the person, and in immediate proximity to the  
 3 space reserved in the contract for the consumer's signature or  
 4 on the front page of the receipt if a contract is not used, a  
 5 statement which shall be in bold face type, in at least  
 6 10-point type and in substantially the following form:

7 "YOU, THE CONSUMER, MAY CANCEL THIS TRANSACTION AT ANY TIME  
 8 PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY (OR FIFTEENTH  
 9 BUSINESS DAY IF YOU ARE AGE 65 OR OLDER) AFTER THE DATE OF THIS  
 10 TRANSACTION. SEE THE ATTACHED NOTICE OF CANCELLATION FORM FOR  
 11 AN EXPLANATION OF THIS RIGHT."

12 Attached to the receipt or contract shall be a completed  
 13 form in duplicate, captioned "NOTICE OF CANCELLATION" which  
 14 shall be easily detachable and which shall contain in 10 point  
 15 bold face type the following information and statements in the  
 16 same language as that used in the contract:

17 NOTICE OF CANCELLATION

18 (enter date of transaction)

19 .....

20 (Date)

21 YOU MAY CANCEL THIS TRANSACTION, WITHOUT ANY PENALTY OR  
 22 OBLIGATION, WITHIN 3 BUSINESS DAYS (OR 15 BUSINESS DAYS IF YOU  
 23 ARE AGE 65 OR OLDER) FROM THE ABOVE DATE.

24 IF YOU CANCEL, ANY PROPERTY TRADED IN, ANY PAYMENTS MADE BY  
 25 YOU, AND ANY NEGOTIABLE INSTRUMENT EXECUTED BY YOU UNDER THE  
 26 CONTRACT OR TRANSACTION WILL BE RETURNED WITHIN 10 BUSINESS

1 DAYS FOLLOWING RECEIPT BY THE SELLER OF YOUR CANCELLATION  
2 NOTICE, AND ANY SECURITY INTEREST ARISING OUT OF THE  
3 TRANSACTION WILL BE CANCELLED.

4 IF YOU CANCEL, YOU MUST MAKE AVAILABLE TO THE SELLER AT  
5 YOUR RESIDENCE IN SUBSTANTIALLY AS GOOD A CONDITION AS WHEN  
6 RECEIVED, ANY GOODS DELIVERED TO YOU UNDER THIS CONTRACT OR  
7 TRANSACTION, OR YOU MAY IF YOU WISH, COMPLY WITH THE  
8 INSTRUCTIONS OF THE SELLER REGARDING THE RETURN SHIPMENT OF THE  
9 GOODS AT THE SELLER'S EXPENSE AND RISK.

10 IF YOU MAKE THE GOODS AVAILABLE TO THE SELLER AND THE  
11 SELLER DOES NOT PICK THEM UP WITHIN 20 DAYS OF THE DATE OF YOUR  
12 NOTICE OF CANCELLATION, YOU MAY RETAIN OR DISPOSE OF THE GOODS  
13 WITHOUT ANY FURTHER OBLIGATION. IF YOU FAIL TO MAKE THE GOODS  
14 AVAILABLE TO THE SELLER, OR IF YOU AGREE TO RETURN THE GOODS TO  
15 THE SELLER AND FAIL TO DO SO, THEN YOU REMAIN LIABLE FOR  
16 PERFORMANCE OF ALL OBLIGATIONS UNDER THE CONTRACT.

17 TO CANCEL THIS TRANSACTION, MAIL OR DELIVER A SIGNED AND  
18 DATED COPY OF THIS CANCELLATION NOTICE OR ANY OTHER WRITTEN  
19 NOTICE, OR SEND A TELEGRAM, TO (Name of seller), AT (address of  
20 seller's place of business) NOT LATER THAN MIDNIGHT OF (date).

21 I HEREBY CANCEL THIS TRANSACTION.

22 (Date) .....

23 .....

24 (Buyer's signature)

25 Such written "Notice of Cancellation" may be sent by the  
26 consumer to the person to cancel the contract. The 3 day period

1 (or 15 day period of the consumer is age 65 or older) provided  
2 for in this Section does not commence until the consumer is  
3 furnished a "Notice of Cancellation", and the address at which  
4 such notice to the seller can be given. If those conditions are  
5 met, the seller must return to the consumer the full amount of  
6 any payment made or consideration given under the contract or  
7 for the merchandise. It is an unlawful practice within the  
8 meaning of this Act for any person to

9 (a) Fail, before furnishing copies of the "Notice of  
10 Cancellation" to the consumer, to complete the copies by  
11 entering the name of the person, the address of the person's  
12 place of business, the date of the transaction, and the date,  
13 not earlier than the third business day (or fifteenth business  
14 day if the consumer is age 65 or older) following the date of  
15 the transaction, by which the consumer may give notice of  
16 cancellation;

17 (b) Include in any contract or receipt under this Section  
18 any confession of judgment or any waiver of any of the rights  
19 to which the consumer is entitled under this Section including  
20 specifically his right to cancel the transaction in accordance  
21 with the provisions of this Section;

22 (c) Fail to inform each consumer orally, at the time he  
23 signs the contract or purchases or leases the goods or  
24 services, of his right to cancel;

25 (d) Misrepresent in any manner the consumer's right to  
26 cancel;

1           (e) Use any undue influence, coercion or any other wilful  
2 act or representation to interfere with the consumer's exercise  
3 of his rights under this Section;

4           (f) Fail or refuse to honor any valid notice of  
5 cancellation by a consumer and within 10 business days after  
6 the receipt of such notice, to

7               (i) refund all payments made under the contract or  
8 sale,

9               (ii) return any goods or property traded in, in  
10 substantially as good a condition as when received by the  
11 person, or

12               (iii) cancel and return any negotiable instrument  
13 executed by the consumer in connection with the contract or  
14 transaction and take any action necessary or appropriate to  
15 terminate promptly any security interest created in the  
16 transaction;

17           (g) Negotiate, transfer, sell, or assign any note or other  
18 evidence of indebtedness to a finance company or other third  
19 party prior to midnight of the fifth business day following the  
20 day the contract was signed or the goods or services were  
21 purchased or leased; or

22           (h) Fail, within 10 business days of receipt of the  
23 consumer's notice of cancellation, to notify him whether the  
24 seller intends to repossess or to abandon any shipped or  
25 delivered goods.

26           For the purposes of this Section, the word "sale" includes

1 a sale, lease or rental.

2 This Section does not apply to any transaction

3 (a) made pursuant to prior negotiations in the course of a  
4 visit by the consumer to a retail business establishment having  
5 a fixed permanent location where the goods are exhibited, or  
6 the services are offered, for sale or lease on a continuing  
7 basis;

8 (b) in which the consumer is accorded the right of  
9 rescission by the provisions of the Consumer Credit Protection  
10 Act (15 U.S.C. 1635) or regulations issued pursuant thereto;

11 (c) in which the consumer has initiated the contact and the  
12 goods or services are needed to meet a bona fide immediate  
13 personal emergency of the consumer, and the consumer furnishes  
14 the person with a separate dated and signed personal statement  
15 in the consumer's handwriting describing the situation  
16 requiring immediate remedy and expressly acknowledging and  
17 waiving the right to cancel the sale within 3 business days (or  
18 15 business days if the consumer is age 65 or older);

19 (d) conducted and consummated entirely by mail or telephone  
20 without any other contact between the consumer and the person  
21 or its representative prior to delivery of the goods or  
22 performance of the services;

23 (e) in which the consumer has initiated the contact and  
24 specifically requested the person to visit his home for the  
25 purpose of repairing or performing maintenance upon the  
26 consumer's personal property, on the condition that if, in the

1 course of such a visit, the person sells the consumer the right  
2 to receive additional services or goods other than replacement  
3 parts necessarily used in performing the maintenance or in  
4 making the repairs, the sale of those additional goods or  
5 services does not fall within this exclusion;

6 (f) pertaining to the sale or rental of real property, to  
7 the sale of insurance or to the sale of securities or  
8 commodities by a broker-dealer registered with the Securities  
9 and Exchange Commission; or

10 (g) between a consumer and a loan broker licensed under the  
11 Residential Mortgage License Act of 1987 when (i) the  
12 transaction involves obtaining a mortgage loan on real estate  
13 and (ii) the first contact respecting the transaction is  
14 initiated by the consumer or by another person at the request  
15 of the consumer.

16 (Source: P.A. 90-764, eff. 1-1-99.)

17 Section 99. Effective date. This Act takes effect January  
18 1, 2016.